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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/435,854	11/08/1999	TIMOTHY R. PRYOR	P00891US3	5796

7590 01/14/2002

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EXAMINER

ABDULSELAM, ABBAS L

ART UNIT

PAPER NUMBER

2674

DATE MAILED: 01/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/435,854

Applicant(s)
Pryor

Examiner
Abbas Abdulsalam

Group Art Unit
2674



☒ Responsive to communication(s) filed on Nov 2, 2001

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-22 and 27 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 1-22 and 27 is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 2674

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

2. The applicant amended claim 1 to recite "gaming or simulation" (rather than "and"). However as will be seen in the rejection below, Pryor (USPN 6008800), claim 45 states interactive system and means for forming electro-optical formation. Both ways, "or" as well as "and" are met by claim 45.

The applicant mentioned about the consideration of six of seven IDS. All of the IDS submitted were considered.

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-22 and 27 are rejected under the judicially created doctrine of double patenting over claims 1-48 of U. S. Patent No. 6008800 to Pryor since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

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The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

Regarding claims 1, 5, 7-8, 10-11, 16-17, 19, 21 and 27, the claimed steps of providing a computer controlled display screen, obtaining one or more optical images containing data, determining locations, and the optical determination of position points on objects are met by the patent claim 45. However, Pryor patent claim 45 does not specifically state a method of gaming and simulation. Instead, it teaches about an interactive system involving a user and a means for forming electro-optical image formation.

Therefore, it would have been obvious to one skilled in the art that an interactive system and the stated means as claimed in the patent and computer game and simulation as claimed in the present application correspond each other and perform the same function.

Regarding claims 2-3, 6, and 13- 15, they are met by the patent claim 47. The patent claim 47 uses "detector means" instead of "determining steps".

Therefore, it would have been obvious to one skilled in the art to recognize that detector means corresponds to determining steps and statements in the patent claim 47 and the stated claims of the present application both serve the same purpose and teach the use of cameras in the similar scenario.

Regarding claims 4, 9, 12, 18, and 20, they are met by the patent claim 46. The patent claim 46 teaches about " the displayed image video".

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4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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5. Any inquiry concerning this communication or earlier communication from the examiner should be directed to **Abbas Abduselam** whose telephone number is **(703) 305-8591**. The examiner can normally be reached on Monday through Friday (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Richard Hjerpe**, can be reached at **(703) 305-4709**.

Any response to this action should be mailed to:

Commissioner of patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9314


Hand delivered responses should be brought to crustal park II, Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology center 2600 customer Service office whose telephone number is (703) 306-0377.

Abbas Abduselam

Examiner

Art Unit 2674


RICHARD HJERPE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600